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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 407

[Docket No. FCIC-15-0003]

RIN 0563-AC49

Area Risk Protection Insurance (ARPI) Regulations; ARPI Basic Provisions and ARPI Forage Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Area Risk Protection Insurance (ARPI) Regulations; ARPI Basic Provisions and ARPI Forage Crop Insurance Provisions. The intended effect of this action is to meet the goals of the Acreage Crop Reporting Streamlining Initiative (ACRSI), which is a United States Department of Agriculture initiative and required by Agricultural Act of 2014 (2014 Farm Bill), by aligning ARPI Forage Production with the Actual Production History Forage Production Crop Insurance Provisions and to address language contained in section 12305(b)(1)(B) of the 2014 Farm Bill that prohibits FCIC from offering the catastrophic (CAT) level of coverage for any crops or grasses used for grazing. The changes will be effective for the 2017 and succeeding crop years.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Written comments and opinions on this rule will be accepted until close of business [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER]. FCIC will consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-15-0003 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823-4694 or by email at [rmaweb.content@rma.usda.gov](mailto:rmaweb.content@rma.usda.gov).

Privacy Act: Anyone is able to search the electronic form of all comments received for

any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Notice and Comment

We are issuing this final rule without prior notice and opportunity for comment. The Administrative Procedure Act (APA) exempts rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” from the statutory requirement for prior notice and opportunity for comment. 5 U.S.C. 553(a)(2). However, FCIC is providing a 60-day comment period and we invite you to participate in this rulemaking by submitting written comments. We will consider the comments we receive and may conduct additional rulemaking based on the comments.

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C.

chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0085.

#### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that

this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

#### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

#### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR

part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

#### Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

FCIC amends the Area Risk Protection Insurance Regulations (7 CFR part 407) by revising §407.9 Area Risk Protection Insurance Policy and §407.13 Forage Crop Insurance Provisions to be effective for the 2017 succeeding crop years. The revisions meet certain goals of ACRSI, which include elimination of duplicate information collection, simplification of producer reporting, and incorporating language contained in section 12305(b)(1)(B) of the 2014 Farm Bill prohibiting FCIC from offering the CAT level of coverage for any crops or grasses used for grazing.

Previously, changes made to the Federal crop insurance policies codified in the Code of

Federal Regulations were required to be implemented through the rulemaking process. Such action was not required by the Administrative Procedures Act because contracts were exempt from notice and comment rulemaking and the crop insurance policy is a contract. However, a prior Secretary of Agriculture published a notice in the Federal Register stating that the Department of Agriculture would, to the maximum extent practicable, use the notice and comment rulemaking process when making program changes, including those involving contracts. FCIC has complied with this notice over the subsequent years. Recently, the current Secretary of Agriculture has published a notice in the Federal Register rescinding the prior notice, thereby making contracts again exempt from the notice and comment rulemaking process. However, FCIC values the input it receives through comments and has elected to solicit comments to this final rule. FCIC will consider all of the comments that are received and may conduct additional rulemaking based on the comments.

For these reasons, these policy changes are effective upon publication at the Office of the Federal Register.

The specific revisions to Area Risk Protection Insurance Policy (7 CFR 407.9) are as follows:

1. Section 8 – FCIC is revising paragraph (e)(2). The current provisions regarding the insured’s ability to revise an acreage report state that consent may only be provided if the information on the acreage report is clearly transposed, or the insured provides adequate evidence that the insurance company or someone from USDA has committed an error regarding the information on the acreage report. FCIC is revising this provision to include language that gives FCIC the flexibility through the Crop Provisions or through the Special Provisions to

provide additional circumstances for which insureds may revise their acreage reports. This change is necessary due to changes in the ARPI Forage Crop Provisions stated below that allow acreage reports be revised when the acreage has suffered winterkill. FCIC is also revising the paragraph to improve readability.

The specific changes to ARPI Forage crop insurance provisions (7 CFR 407.13) are as follows:

1. Section 1 – FCIC is revising the definition of “harvest.” The definition of “harvest” states “removal of the forage from the field, and rotational grazing.”

However, the 2014 Farm Bill prohibits FCIC from offering the CAT level of coverage for any crops or grasses used for grazing. Further, the Noninsured Crop Assistance Program (NAP) offers coverage at the CAT and additional levels of coverage. To avoid confusion between the benefits available, FCIC is removing the option to purchase coverage for grazing at the additional and CAT level of coverage so that forage producers are eligible for at least the CAT level of coverage offered under other USDA programs. Therefore, FCIC is removing the term “rotational grazing,” from the definition of “harvest” and removing the definition of “rotational grazing” so that FCIC can continue to offer the CAT level of coverage to forage producers who do not graze acreage.

2. Section 5 – FCIC is moving the cancellation date, termination date and contract change date 60 days earlier: for the termination and cancellation dates, from November 30 to September 30, and for the contract change date, from August 31 to June 30. A goal under ACRSI is to establish one acreage reporting date for each commodity that will be used for USDA programs. For perennial forage, ACRSI established two commodities for perennial forage: an

established stand and fall-seeded commodity; and a spring-seeded commodity. Each commodity requires its own acreage reporting date: one in the fall and one in the spring, respectively. In order to be insured under the ARPI forage policy, perennial forage must have an established stand for insurance to attach. Therefore, its acreage reporting date needs to be in the fall in order for its acreage reporting date to align with the acreage reporting date for established stand perennial forage insured under other plans of insurance. The acreage reporting date for established stand and fall-seeded perennial forage insured under other plans of insurance FCIC offers is set at November 15 or December 15, depending on the state. The fall date is necessary for the other perennial forage plans of insurance because those plans of insurance provide coverage for damage due to winterkill. Therefore, FCIC must require producers to report their acreage prior to the possibility of an occurrence of winterkill. In order to move the acreage reporting date, which is contained in the actuarial documents, from the current date of July 15 to November 15 or December 15, depending on the state, FCIC must also make adjustments in the Crop Provisions to these other program dates: cancellation and termination dates and the contract change date. This change will make the program dates for forage insured under ARPI consistent with the program dates for forage insured under other plans of insurance.

3. Section 6 – FCIC is removing this section and add another in its place. The current section 6 addresses when premium is earned and payable, and overrides section 7(e) in the ARPI Basic Provisions. Basic Provisions section 7(e) states that premium is earned and payable at the time coverage begins, whereas section 6 of the Forage Crop Provisions states that premium is earned and payable on the acreage reporting date. Coverage for forage begins on the date the insurance company accepts the application, which is in the fall. Currently, premium for forage is

not earned and payable at the time coverage begins, but rather on the acreage reporting date, which is approximately eight months after insureds submit their applications. Premium is earned and payable on the acreage reporting date because insureds have the opportunity at acreage reporting date to opt out of coverage if they can establish that their acreage was damaged by winterkill by reporting such acreage as uninsurable on the acreage report. Insureds do not owe premium on acreage damaged by winterkill if they report such acreage on the acreage report as uninsurable. Insureds do not know if their acreage is damaged by winterkill until mid-to-late spring. If insureds report such acreage as uninsurable, then they are not required to pay premium on that acreage. FCIC proposes to remove these provisions, which then makes section 7(e) of the Basic Provisions applicable. Therefore, premium will be earned and payable at the time coverage begins. This change will make forage insured under ARPI consistent with forage insured under the APH plan of insurance. As a result of another revision discussed below, insureds will have an opportunity to revise their acreage reports after the acreage reporting date to report their acreage damaged by winterkill as uninsurable acreage if they do not wish to insure that acreage and pay premium on it.

FCIC is adding a new section 6 titled “Report of Acreage.” The provisions in section 6 will allow insureds to submit a revised acreage report by a date specified in the Special Provisions if they want to report their acreage damaged by winterkill as uninsurable acreage. FCIC anticipates the date specified in the Special Provisions to be May 15. Without this provision, insureds would be required to insure and pay premium on acreage they currently are not required to insure under the ARPI Forage Crop Provisions.

**List of Subjects in 7 CFR Part 407**

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 407 effective for the 2017 and succeeding crop years as follows:

**PART 407- AREA RISK PROTECTION INSURANCE REGULATIONS**

1. The authority citation for 7 CFR part 407 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(o).

2. Amend §407.9 by:

a. In the introductory text, removing “2014” and adding “2017” in its place; and

b. In section 8, revising paragraph (e)(2).

The revisions read as follows:

**§407.9 Area risk protection insurance policy.**

\* \* \* \* \*

8. Report of Acreage and Production

\* \* \* \* \*

(e) \* \* \*

(2) Consent may only be provided:

(i) If the information on the acreage report is clearly transposed;

(ii) If you provide adequate evidence that we have or someone from USDA has committed an error regarding the information on your acreage report;

(iii) If allowed in the Crop Provisions; or

(iv) As otherwise provided in the Special Provisions; and

\* \* \* \* \*

3. Amend §407.13 by:

a. In the introductory text, removing “2014” and adding “2017” in its place;

b. In section 1:

i. Revising the definition of “Harvest”; and

ii. Removing the definition of “Rotational grazing”; and

c. Revising sections 5 and 6.

The revisions read as follows:

**§407.13 Area risk protection insurance for forage.**

\* \* \* \* \*

1. Definitions

\* \* \* \* \*

Harvest. Removal of the forage from the field. Harvest does not include grazing.

\* \* \* \* \*

5. Program Dates

September 30 is the cancellation and termination date for all states, unless the date is specified differently in the Special Provisions. The contract change date is June 30 for all states, unless the date is specified differently in the Special Provisions.

6. Report of Acreage

In addition to section 8(e)(2) of the Area Risk Protection Insurance Basic Provisions, regarding the ability to revise an acreage report you have submitted to us, we may provide you

consent to revise your acreage report to indicate acreage damaged by winterkill that was not harvested (no cutting taken) as uninsurable acreage. You must submit a revised acreage report on or before the date specified in the Special Provisions.

Signed in Washington, D.C., on November 13, 2015.

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Brandon Willis,  
Manager,  
Federal Crop Insurance Corporation.  
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